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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,958	03/19/2004	Chanh C. Vo	HE0222	9176
21495 7590 04/29/2010 CORNING INCORPORATED INTELLECTUAL PROPERTY DEPARTMENT, SP-TI-3-1 CORNING, NY 14831				
EXAMINER				
CHIEH, DINH D				
ART UNIT		PAPER NUMBER		
2883				
NOTIFICATION DATE		DELIVERY MODE		
04/29/2010		ELECTRONIC		

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/804,958
Filing Date: March 19, 2004
Appellant(s): VO ET AL.

John H. Vynalek (Reg. No. 37,254)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 4, 2010 appealing from the Office action mailed July 22, 2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The statement of the Amendments After Final contained in the brief is correct

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

Appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,218,664	O'NEILL	7-1993
6,434,313	CLAPP	8-2002
5,649,042	SAITO	7-1997

pedestal." Merriam-Webster Online Dictionary. 2010. Merriam-Webster Online. 20 April 2010

<<http://www.merriam-webster.com/dictionary/pedestal>>

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 8, 11-12, 17-21, and 28-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Neill et al. in view of Clapp, Jr. et al. (US 6,434,313 B1).

In terms of claims 1-4, 17, 20-21, and 28-29, O'Neil teaches a splice pedestal comprising a base (Fig. 1; '12' '21' '24' and see also Fig. 7), a housing (10) positioned over the base, a distribution cable (9) received within the interior cavity, a plate (26) secured to one of the housing and the base and operable for separating the interior cavity into a first compartment (not explicitly drawn but explained in col. 2, lines 52-57) disposed within the housing and a second compartment (21). A splice tray (24) provides means for interconnecting at least one optical fiber of the distribution cable to at least one optical fiber of the drop cable. Furthermore, a plate (26) sealing the first compartment relative to the second compartment and the gel is only filled from (21) to (25), which is the first compartment and the second compartment are substantially free of a gel encapsulant material. O'Neil discloses at least one cable port for routing the distribution cable into and out of the first compartment (9). At least one optical fiber of the distribution cable is spliced to the at least one optical fiber of the drop cable in the

first compartment (col. 2, lines 30-54) and wherein the means for interconnecting comprises at least one splice tray (24).

However, O'Neil discloses a gel encapsulant material in the first and/or second compartment and does not teach the compartments are free of a gel encapsulant material.

Clapp discloses a fiber optic closure with couplers and splice tray. As Fig. 1 shows the splice tray and the separation of the first and the second compartment separated by the plate or refer to as the "end cap" by Clapp Jr. Furthermore, Clapp discloses the end cap seals the enclosure without any gel encapsulant material (Col. 2, lines 40-56). It would have been obvious to one skilled in the art to recognize the sealing method free of gel sealant, as disclosed by Clapp would be modifiable to the housing of O'Neil. One would be motivated to seal the compartment without sealant such that the enclosure can be removed and the internal members can be worked on or replaced without having the deterrent of the gel encapsulant material and/or replace the gel encapsulant material in order to re-seal the enclosure.

Examiner respectfully points out Clapp also refers to the plate which separates the first and second compartment as end-cap but still reads upon applicant's claimed first and second compartments. However, Fig. 4 is extract from applicant's disclosed figures clearly shows the plate (38) creates the barrier between the first and second compartment is also the end-cap since plate 38 functions as the

sealing structure and the so-call first-compartment is

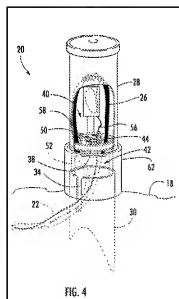
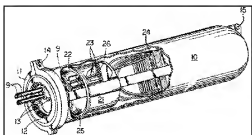


FIG. 4

merely the open space that is formed within the cylinder between plate 38 or end-cap 38 with the ground. Applicant does not distinctly disclose the patentable distinction between the “first compartment” (Fig. 1) between the space in the phantom lines and the “second compartment wherein the cables (9) are extending from.

Regarding claims 8, 11-12, and 18-19 the “plate” is referred to as “circular areas” by O’Neill; wherein the circular areas joined together to form a plate sealing the first compartment relative to the second compartment. The second compartment creates a bell jar effect when the housing (10) is positioned over the base to further seal the interior cavity relative to the ambient atmosphere.

Claims 7, 9-10, 23-24, and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over O’Neil et al. and Clapp Jr. in further view of Saito (US 5,649,042).

O’Neil teaches a splice pedestal comprising a base (Fig. 1; ‘12’ ‘21’ ‘24’ and see also Fig. 7), a housing (10) positioned over the base, a distribution cable (9) received within the interior cavity, a plate (26) secured to one of the housing and the base and operable for separating the interior cavity into a first compartment (not explicitly drawn but explained in col. 2, lines 52-57) disposed within the housing and a second compartment (21). A splice tray (24) means for interconnecting. Furthermore, a plate (26) sealing the first compartment relative to the second compartment and the gel is only filled from (21) to (25), which is the first compartment and the second compartment is substantially free of a gel encapsulant material.

However, O’Neil and Clapp Jr. do not explicitly teach the limitation of a pre-connectorized cable.

Saito teaches a cable distribution shelf or closure employs preconnectorized cable for the purpose of preventing entanglement of the optical fiber cables (col. 1, lines 36-52).

Since O'Neil and Saito are both from the same field of endeavor, the purpose disclosed by Saito would have been recognized in the pertinent art of O'Neal.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to employ preconnectorized cable to separate the cables and preventing entanglement of the cables. The motivation employing preconnectorized cable is to prevent the cables from intertwined with one another causing bent in the fiber leading to signal loss of the fiber transmission. By maintaining the cable at a minimal bent using preconnectorized cable, signal loss caused by bent in entangled cables is prevented. The more well-known motivation for utilizing preconnectorized cable is the ease of installation on-site, since the connective junction of the cable to any suitable device does not need to be spliced on-site since it has been "preconnected," hence the name preconnectorized cable.

(10) Response to Argument

The following are examiner's responses to Appellant's arguments:

D. Whether claims 1-4, 8, 11-12, 17-21, and 28-29 are patentable over O'Neill and Clapp.

D-1. With respect to claims 1, 17, and 28, Appellant argues that neither the disclosures of O'Neill nor Clapp teaches a "pedestal base with a housing positioned over the pedestal base."

According to Merriam-Webster Online definition

Pedestal *n.* 2. Base, Foundation

The prior art of O'Neill clearly teaches end cap 12 is "a base" in at least providing indirect support for pail 21 and splice tray 24 via the two vertical bars (See Figs. 1 and 7). Thus end cap 12 reads on the claimed "pedestal base" as broadly interpreted.

Furthermore, O'Neill shows the housing 10 which overlaps the pedestal base 12 at least to some degree, thereby reading on the limitation "the housing positioned over the pedestal base." Alternatively, depending on the orientation of the splice closure, the housing 10 is oriented over top of the pedestal base 12 (See Figs. 1 and 7). Thus, these claim limitations as broadly interpreted are met by the structure of O'Neill.

D-2. Appellant argues O'Neill and Clapp fail to disclose or suggest a "plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed with in the housing."

The examiner considers O'Neill disclosed plate at 26, shown in Fig. 1, with plural ports 26. The metal structure at 26 meets the limitation of "a plate" since it has a relatively flat bottom surface. Note, bottom of pail 21 is shown relatively flat and cylindrical bottom portion meeting claim limitation of "a plate," as broadly claimed. The plate is at least indirectly secured to housing 10 and the pedestal base via the vertical bars and pail 21. Furthermore, the plate at 26 is *operable* for separating the interior cavity into a first compartment defined by the

space above plate at 26 with splice tray 24 and a second compartment defined by the space below plate at 26 with fibers 23 extending to ports 9. Concerning Clapp not teaching the limitation; Clapp was not relied upon to teach this limitation; rather the limitation is met by O'Neill as discussed above. Thereby, the prior art to O'Neill in view of Clapp teach the limitation "plate secured to one of the housing and the pedestal base and operable for separating the interior cavity into a first compartment disposed within the housing and a second compartment disposed with in the housing."

D-3. Appellant argues O'Neill and Clapp fail to disclose or suggest "a plate having at least one connector port mounted thereon."

The examiner disagrees since the metal structure at 26 is considered having a relatively flat bottom wherein plural ports 26 are formed therein. Plural ports 26 are through-holes provided for spliced fiber within the first compartment extending from splice tray 24 to be connected to plural ports 9. Since plural ports 26 are formed within the plate, prior art to O'Neill is deemed to anticipate this limitation.

E-1. Appellant argues O'Neill and Clapp in further view of Saito does not teach the limitations of claims 7, 9, 10, 23, 24, and 31 since none of the three prior arts teach a "pedestal base" nor do they teach a plate secured to one of the housing and

the pedestal base and operable for separating the interior cavity into a first compartment and a second compartment within the housing.

Saito was not relied upon to teach these limitations; O'Neill discloses these limitations as discussed previously. Firstly, according to Merriam-Webster Online definition

Pedestal *n.* 2. Base, Foundation

The prior art of O'Neill clearly teaches end cap 12 is "a base" in at least providing indirect support for pail 21 and splice tray 24 via the two vertical bars (See Figs. 1 and 7). Thus end cap 12 constitutes a pedestal base as noted above.

Furthermore, O'Neill shows the housing 10 which overlaps the pedestal base 12 at least to some degree, thereby reading on the limitation "the housing positioned over the pedestal base." Alternatively, depending on the orientation of the splice closure, the housing 10 is oriented over top of the pedestal base 12 (See Figs. 1 and 7). Thus, these claim limitations as broadly interpreted are met by the structure of O'Neill.

Secondly, the examiner considers a plate at 26, shown in Fig. 1, with plural ports 26. The metal structure at 26 meets the limitation of "a plate" since the metal structure having a relatively flat bottom surface. Note, bottom of pail 21 is shown relatively flat and cylindrical bottom portion meeting claim limitation of "a plate," as broadly claimed. The plate is at least indirectly secured to housing 10 and the pedestal base via the vertical bars and pail 21. Furthermore, the plate at 26 is operable for separating the interior cavity into a first compartment defines

by the space above plate at 26 with splice tray 24 and a second compartment defines by the space below plate at 26 with fibers 23 extending to ports 9. Thereby, the examiner considers O'Neill and Clapp in further view of Saito teach limitations of claims 7, 9, 10, 23, 24, and 31.

E-2. Appellant argues O'Neill and Clapp in further view of Saito does not teach the limitations of claims 23, 24, and 31 because none of the three references teach "wherein the means for interconnecting comprises at least one connector port mounted on the plate."

As discussed above, the examiner considers O'Neill disclosed this limitation in Fig. 1. The metal structure at 26 is considered having a relatively flat bottom wherein plural ports 26 are formed therein. Plural ports 26 are through-holes provided for spliced fiber within the first compartment extending from splice tray 24 to be connected to plural ports 9. Since plural ports 26 are formed within the plate, prior art to O'Neill is deemed to anticipate this limitation. Therefore, O'Neill and Clapp in further view of Saito teach the limitations of claims 23, 24, and 31.

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

/Erin D Chiem/

Examiner, Art Unit 2883

Conferees:

/Mark A. Robinson/

Supervisory Patent Examiner, Art Unit 2883

/Justin P. Bettendorf/

RQAS, TC 2800